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6 IN THE UNITED STATES DISTRICT COURT

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10 UNITED STATES OF AMERICA, No. CR 08-0730 WHA

11 Plaintiff,
12 v.
13 IVAN CERNA, *et al.*,
14 Defendants.

15 _____/ **ORDER RE MOTION TO EXCLUDE
TESTIMONY BY EYEWITNESS
IDENTIFICATION EXPERTS**

16 The government moves to exclude testimony by proposed eyewitness identification
17 experts Dr. Deborah Davis and Dr. Scott Fraser (Dkt. No. 3371). After full consideration of the
18 parties' submissions, argument at the pretrial conference, the testimony of the experts at the
19 evidentiary hearing, and the supplemental proffers, the motion is **GRANTED IN PART**.

20 Dr. Scott Fraser's proposed testimony will be excluded in its entirety. Dr. Deborah Davis'
21 testimony will likely be excluded, with some possible exceptions. Before making a final
22 determination regarding the aspects of Dr. Davis' testimony that might be allowed, the Court will
23 first consider the testimony of the relevant eyewitnesses and will make a decision after the
24 government closes its case-in-chief. This will be a traditional Rule 403 determination, but the
25 record will be better developed and the usefulness of Dr. Davis' testimony will be better assessed
26 at that time.

27 A memorandum opinion will issue in due course. In the meantime, counsel shall not refer
28 to eyewitness identification experts or the proposed testimony. Of course, counsel are free in

United States District Court

For the Northern District of California

1 opening statements to refer to the possible reasons why an eyewitness identification may have
2 been faulty.

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4 **IT IS SO ORDERED.**

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6 Dated: March 31, 2011.

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Wm. Alsup

WILLIAM ALSUP
UNITED STATES DISTRICT JUDGE